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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No.: 08-0083 PJH

Plaintiff,

Defendant Eduardo Zaragoza's
Memorandum on Conflict of
Interest

vs.

MARTELL MURILLO VALENCIA, and
EDUARDO ZARAGOZA,

Defendants.

Defendant Eduardo Zaragoza hereby responds to the Government's and Mr. Lyons's memoranda regarding conflict of interest in the above-entitled matter.

Mr. Eduardo Zaragoza hired Mr. Lyons to represent and defend him against charges filed in San Francisco Superior Court. In late March 2008, Mr. Lyons moved to withdraw from that representation. The Superior Court appointed the conflicts attorney of the day to represent Mr. Zaragoza there.

Mr. Lyons owes a duty of loyalty to Mr. Eduardo Zaragoza. Mr. Zaragoza submits that he did have substantive, confidential conversations with Mr. Lyons. It appears that the two were preparing for either a preliminary hearing or a disposition in the state case. It also seems that the very fact of his representation stands in a

1 conflicted light in that Mr. Lyons has revealed that Mr. Zaragoza used
2 a different name in the state court prosecution. Perhaps it is only
3 through the revelation of the alias that the Government here knows
4 that Mr. Zaragoza was charged with a methamphetamine violation.

5 Mr. Zaragoza is now charged with methamphetamine violations in
6 both jurisdictions. The charges are close enough in time, if not
7 overlapping, that information from one case will be of use in the
8 other.

9 As the Government correctly points out it is possible that Mr.
10 Zaragoza might someday testify in this matter. Mr. Lyons, in
11 representing Mr. Valencia might have to cross examine Mr. Zaragoza.
12 Mr. Lyons's duty to Mr. Zaragoza survives despite his withdrawal from
13 representation in state court. Mr. Lyons could not hold confidential
14 information he has obtained from Mr. Zaragoza as he is obliged to do,
15 while effectively representing Mr. Valencia.

16 The instant case, a large, multi-defendant methamphetamine
17 conspiracy with wiretaps spanning many months is rife with opportunity
18 for information about one client spilling over on and affecting other
19 clients. Because the discovery is so voluminous it is impossible for
20 counsel to tell at this time how relationships between defendants will
21 play out and what information will tie them together.

22 As the Government points out successive representation of clients
23 poses the same conflict problems as simultaneous representation. See
24 Government Brief at 4, citing United States v. Rewald, 889 F.2d 836
25
26

1 (9th Cir. 1989). Mr. Eduardo Zaragoza does not, at this time, intend
2 to waive that conflict.

3 Conclusion

4 For the foregoing reasons Mr. Eduardo Zaragoza requests that the
5 Court not permit Mr. Lyons's representation of Mr. Valencia.

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7 Respectfully submitted,

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9 Dated: April 7, 2008

/s/ _____

10 Claire Leary
11 Counsel for Defendant Eduardo
12 Zaragoza
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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing
Memorandum on Conflict was served electronically on:

Nicole Kim

Assistant United States Attorney

Dated: April 7, 20008

CLAIRE M. LEARY